THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.16944 & 19990 of 2004

COMMON ORDER:

In these two writ petitions, common questions of law and fact arise, therefore, they are being disposed of by this common order.

W.P.No.19990 of 2004

It appears, petitioners are ex-committee members of Primary Agricultural Cooperative Society. Surcharge proceedings were initiated against them and concluded. Aggrieved by the same, petitioners carried the matter before the A.P. Cooperative Tribunal, Hyderabad by way of appeal being C.T.A.No.278 of 2004. Along with the appeal, they also filed I.A.No.1364 of 2004 seeking stay of the surcharge proceedings. The Tribunal in view of Rule 11 read with Rule 12 of the A.P. Cooperative Tribunal (Procedure) Rules, 1994 (for short 'the Rules'), directed the petitioners to deposit 50% of the surcharge amount. Aggrieved by the same, the present writ petition is filed.

It is the contention of the learned counsel for petitioner that firstly the very surcharge proceedings are not maintainable, since there are no dues against the petitioners and they are not involved in any misappropriation of funds of the society. The only allegation is that the petitioners during their term of office of the society, have sanctioned certain loans directly. It is not the case of the respondents that those loans are irregular, or benami nor the petitioners have misappropriated any funds in sanctioning the loans. If there is any allegation of misappropriation causing loss to the assets of the society, proceedings under Section 60 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') can be taken up and not otherwise. Secondly, a Division

Bench of this Court in W.A.No.1262 of 2004 dated 1.9.2004 held as under:

> "When Appeal was taken up for consideration, we have asked learned counsel for the respondents to take appropriate instructions in the matter. Learned counsel for respondents, rightly and frankly, concedes that in the given facts and circumstances, orders could not have been passed by Respondent No.2 under Section 52 of the Act directing inspection of the books of the society. We also find that on the given facts, order of the respondent No.2 is bad in law, and contrary to the letter and spirit of Section 52 of the Andhra Pradesh Cooperative Societies Act, 1964. Consequently, we allow the appeal, and, set aside the impugned order with liberty reserved to the respondents to deal with the representation of members of the Society in accordance with law."

Further, in the facts and circumstances of the case, the action that could have been taken is under Section 51 and not under Section 52 of the Act. The petitioners have raised this objection in the affidavit filed in support of the I.A., but the Tribunal failed to grant blanket stay, and instead granted conditional stay subject to the condition of petitioners paying 50% of the amount involved in the impugned surcharge order as per Rule 11 of the Rules.

Rules 11 and 12 of the A.P. Cooperative Tribunal (Procedure) Rules, 1994 reads as under:

> 11. Application for interim suspension order: Where a party seeks the interim suspension of the impugned order, he shall file a separate application for the same. Every such application shall be supported by an affidavit in respect of applications for stay or suspension of the impugned orders passed by the departmental authorities, specially relating to misappropriation of amounts and sanction of benami loans, no interim orders in the nature of stay or suspension for a specified period shall be issued unless

the applicant produces a cash deposit of not less than 50% of the amount involved in the impugned order or furnishes security of equal value as directed by the Tribunal.

12. Stay of orders: In an appeal, if the Tribunal is satisfied on an affidavit that it is just and reasonable that the operation of the impugned order be stayed or suspended,

a) it may, by order, suspend the operation of the impugned order temporarily after giving notice to the affected persons; or

b) it may give notice to the respondent or respondents and after giving an opportunity of being heard to both the parties either confirm or vacate the order suspending or staying the operation of the impugned order.

A reading of the above rules would categorically indicate that stay or suspension of the impugned orders passed by the departmental authorities, specially relating to misappropriation of amounts and sanction of benami loans, no interim orders in the nature of stay or suspension for a specified period shall be issued unless the applicant produces a cash deposit of not less than 50% of the amount involved in the impugned order or furnishes security of equal value as directed by the Tribunal.

I am of the opinion that the cases of the petitioners do not fit into the above rules. *Prima facie* I am of the opinion that this is not a case of misappropriation of any amounts/assets of the society etc. This is a case where the loans granted on the recommendations of the petitioners were not recovered. It is not the case of the respondents that such loans are not recoverable or became irrecoverable in view of the actions of the petitioners. In a case of this nature, it is not on the basis of inspection report, the proceedings under Section 60 of the Act are to be initiated. In a case of this nature, unless an enquiry is conducted as contemplated under Section 51 of the Act and the

petitioners are given an opportunity to participate in the said enquiry, no action could have been initiated against the petitioners. Further, in the inspection under Section 52 of the Act, petitioners have no role to play. Only in an enquiry contemplated under Section 51 of the Act, petitioners would be entitled to participate in the same. A Division Bench of this Court, as noticed above, held that in the facts and circumstances of the case, inspection could not have been ordered under Section 52 of the Act. *Prima facie*, I am of the opinion that the ratio laid down in the above is also applicable to the facts of this case.

In view of the above, the order passed in I.A.No.1364 of 2004 in C.T.A.No.278 of 2004 dated 28.10.2004 on the file of the A.P. Cooperative Tribunal, Hyderabad is set aside and I.A.No.1364 of 2004 is ordered accordingly. The impugned surcharge proceedings in Rc.No.2502/2002 dated 21.9.2004 issued by the first respondent is suspended during the pendency of appeal before the Tribunal. However, the Tribunal shall dispose of the appeal on its own merits within a period of six weeks from the date of receipt of a copy of this order positively, without being influenced by any of the observations made in this order.

W.P.No.16944 of 2004

The allegations, which are the subject matter of the said Writ Petition and in this Writ Petition, are of similar in nature. The very maintainability of surcharge proceedings is in dispute and that requires to be gone into in C.T.A.No.278 of 2004. Therefore, insofar as enquiry in pursuance of the surcharge notice in Rc.No.3502/2E, dated 12.2.2004 issued by the third respondent is concerned, the same may go on and the final orders passed shall be subject to result of C.T.A.No.278 of 2004 regarding maintainability of surcharge proceedings.

Accordingly, both the writ petitions are disposed of. No order as to costs.

_____
C.V.RAMULU,
J

Date: 4.12.2006

DA

THE HON'BLE SRI JUSTICE C.V.RAMULU

4.12.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.16944 & 19990 of 2004

Date: 4th December, 2006

W.P.No.16944 of 2004

Between:

Cheruvu Parthasaradhi & others.

.. Petitioners

And

Commissioner for Cooperation & Registrar of Cooperative Societies, Andhra Pradesh, Hyderabad & others.

.. Respondents

W.P.No.19990 of 2004

Between:

P.S.Sivudu & others.

.. Petitioners

And

The Divisional Cooperative Officer,
Golconda Division, APHB Complex,
Near Exhibition Grounds, Nampally,
Hyderabad & others.

.. Respondents